

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

GORDON ERNST,

Defendant.

)
)
)
)
) Criminal Action No.
) 1:19-cr-10081-IT-1
)
)
)

BEFORE THE HONORABLE INDIRA TALWANI, DISTRICT JUDGE

RULE 11 HEARING BY VIDEOCONFERENCE

Monday, October 25, 2021
3:07 p.m.

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts

Robert W. Paschal, RMR, CRR
Official Court Reporter
rwp.reporter@gmail.com

A P P E A R A N C E S

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P R O C E E D I N G S

(In open court at 3:07 p.m.)

THE DEPUTY CLERK: United States District Court is now in session, the Honorable Judge Indira Talwani presiding.

This is Case Number 19-cr-10081, United States versus Gordon Ernst. Will counsel please identify themselves for the record.

MS. KEARNEY: Good afternoon, Your Honor. Kristen Kearney for the United States.

THE COURT: Good afternoon.

MS. MINER: Good afternoon, Your Honor. Tracy Miner for Gordon Ernst --

THE COURT: Good afternoon.

MS. MINER: -- who is present.

THE COURT: And we are here for a Rule 11 hearing; is that correct?

MS. MINER: That is correct.

THE COURT: So let me start -- since we're proceeding by video, let me start with our videoconference waiver here.

Mr. Ernst, you're appearing by videoconference with a video link to the courtroom. Your lawyer, the prosecutor, the courtroom deputy, and the court reporter are appearing by video. I'm here in the courtroom. The courtroom is not closed, but there is -- there are no -- there is no one else

1 here but me.

2 If you have any trouble with the video connection,
3 if you cannot hear or see what is happening, let me know,
4 speak up, wave your hand. I will stop the proceeding and try
5 to take care of it.

6 And is -- is your microphone on so we can hear you?

7 THE DEFENDANT: (Muted.)

8 THE COURT: No. Can you --

9 THE DEPUTY CLERK: It was on a moment ago.

10 Your Honor, this is Ms. Marchione. Everything
11 looks like it's uniformly correct. So maybe if we have
12 Mr. Ernst leave and come back in, that will correct it?

13 MS. MINER: There should be a toggle at the bottom
14 of -- left-hand bottom of your screen that says, "Join with
15 computer audio."

16 THE COURT: Okay. Can we hear you now?

17 THE DEFENDANT: I think so, Your Honor. No?

18 THE COURT: Yes. Now we can. Okay.

19 So if you need anything repeated, let me know.

20 The court reporter is preparing a transcript of the
21 proceeding, but no video of the -- no recording of the video
22 itself will be preserved.

23 So you have the right to be physically present in
24 open court for your change of plea, but you can waive that
25 right. Before I ask whether you intend to waive your right,

1 you should know the following:

2 Today is October 25, 2021. We are experiencing a
3 worldwide epidemic caused by COVID-19. The President of the
4 United States has declared a state of emergency. Congress
5 has passed an emergency statute that permits defendants in
6 criminal cases to appear in court by video or telephone for
7 certain types of proceedings under certain circumstances.

8 Our normal procedure before the emergency was to
9 have all defendants physically present in the courtroom for
10 proceedings such as these. We are attempting as best as we
11 can to protect the health and safety of court employees,
12 lawyers, defendants, security personnel, and everyone else
13 who is involved with the court system. At the same time, we
14 are attempting to permit the basic functions of the Court to
15 go forward without unnecessary delays.

16 The physical appearance of defendants in the
17 courthouse and their travel to and from the courthouse is
18 likely to increase the health risks for all persons involved.
19 To try to minimize the health risks, among other things, we
20 are giving defendants who prefer to appear in court by video
21 the option to do so. It is voluntary. You do not have to
22 appear by video. If you choose to appear by video, I will
23 ask you to waive your right to be physically present.

24 You should also know that you have a right to
25 this -- a public proceeding and to have this proceeding

1 conducted in open court in public view. Again, our normal
2 procedure before the emergency was to have all such
3 proceedings in open court in public view. In light of the
4 emergency caused by the pandemic and as announced on our
5 website, we are permitting members of the public to have
6 access to this videoconference by telephone.

7 Ms. Marchione, do we have members of the public on
8 the line?

9 THE DEPUTY CLERK: Yes, Your Honor, we do.

10 THE COURT: Okay. Mr. Ernst, do you understand you
11 have the right to be physically present in open court for
12 your change of plea?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: Do you understand you have a right to
15 consult with your lawyer during your change of plea?

16 THE DEFENDANT: Yes, I do, Your Honor.

17 THE COURT: Do you understand that if you wish to
18 speak with your lawyer during the change of plea, you just
19 need to let me know, and I will make arrangements for the two
20 of you to have a confidential communication? Do you
21 understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you understand that you have the
24 right to hear and see everything that happens in court during
25 the change of plea, but because we have only a single camera,

1 you can only see part of the courtroom?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that your family
4 members and other supporters have the right to attend this
5 proceeding, but if we proceed by video, they will have to do
6 so by telephone? Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Have you consulted with your lawyer
9 concerning waiving your right to appear in person?

10 THE DEFENDANT: I have.

11 THE COURT: And do you agree to waive your right to
12 appear in person for your change of plea and appear instead
13 by video?

14 THE DEFENDANT: Yes, I agree, Your Honor.

15 THE COURT: And do you also agree that, to the
16 extent that your right to public access to this proceeding is
17 in any way impaired, you waive that right?

18 THE DEFENDANT: I do.

19 THE COURT: And to the lawyers, is there any reason
20 I should not accept the waiver?

21 MS. KEARNEY: No, Your Honor.

22 MS. MINER: No, Your Honor.

23 THE COURT: I find that the defendant has knowingly
24 and voluntarily waived his right to appear physically at his
25 change of plea. I further find that requiring the defendant

1 to be present would jeopardize public health and safety of
2 those who are or would be present during the proceedings and
3 during his travel here.

4 I further find that the measures taken to provide
5 public access to this proceeding are reasonable under the
6 circumstances and that, to the extent that the defendant's
7 right to public access to this proceeding is in any way
8 impaired, the defendant has knowingly and voluntarily waived
9 that right.

10 I further find that delay would harm the interest
11 of justice in this case. It is a 2019 case, and the -- it is
12 in the interest of justice to move forward at this time. I
13 accept the waiver and will move forward by videoconference.

14 So, with that, Ms. Marchione, can you please swear
15 in Mr. Ernst?

16 THE DEPUTY CLERK: Yes, Your Honor.

17 Mr. Ernst, can you please raise your right hand.

18 (Defendant duly sworn)

19 THE DEPUTY CLERK: Thank you. Please state your
20 name for the record.

21 THE DEFENDANT: Gordon Mark Ernst.

22 THE COURT: Mr. Ernst, do you understand you are
23 now under oath and that if you answer any of my questions
24 falsely, your answers may later be used against you in
25 another prosecution for perjury or making a false statement?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And, again, you may consult with your
3 counsel at any point during the course of these proceedings.

4 Mr. Ernst, how old are you?

5 THE DEFENDANT: Fifty-four, Your Honor.

6 THE COURT: And what education level have you
7 attained?

8 THE DEFENDANT: I finished college. I got my
9 degree from Brown University in 1990. I continued my studies
10 at Georgetown, where I did not complete my master's.

11 THE COURT: Okay. And as you appear here today,
12 are you under the influence of any drug or alcoholic beverage
13 of any kind?

14 THE DEFENDANT: No, I am not.

15 THE COURT: Have you taken any medicine,
16 prescription or otherwise, that could affect your ability to
17 understand these proceedings and to testify truthfully?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Have you received any recent treatment
20 for any mental illnesses of any kind?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Have you received a copy of the second
23 superseding indictment in this case?

24 THE DEFENDANT: I have, Your Honor.

25 THE COURT: And the second superseding indictment

1 charges you with a number of counts. And I understand that
2 you're planning to plead guilty to some of these counts, and
3 the Government intends to dismiss the other counts at
4 sentencing.

5 Is that correct, Ms. Kearney?

6 MS. KEARNEY: Yes, Your Honor.

7 THE COURT: Okay. So I'm going to take a little
8 bit more time on the counts that I understand that you're
9 planning to plead guilty to today. You are charged with --
10 in Count 4, 18 USC Section 371, conspiracy to commit federal
11 programs bribery, in or about 2007 through August 2018.

12 In Count 5, 6, and 7, violation of 18 USC
13 Sections 666 -- sorry -- Section, singular, 666(a)(1)(B),
14 federal programs bribery. Count 5 is in or about 2014 to
15 2016, Count 6 is in or about 2017 to 2018, and Count 7 is
16 also in or about 2017 to 2018.

17 And in Count 21, violation of 26 USC
18 Section 7206(1), filing a false tax return, on or about
19 March 15, 2018.

20 Do you understand those charges?

21 THE DEFENDANT: I do, Your Honor.

22 THE COURT: Do you understand that you're
23 represented by counsel?

24 THE DEFENDANT: I do, Your Honor.

25 THE COURT: Have you fully discussed these charges

1 against you and the facts and circumstances of this case with
2 counsel?

3 THE DEFENDANT: Yes, I have, Your Honor.

4 THE COURT: And are you fully satisfied with the
5 counsel, representation, and advice given to you in this case
6 by your attorney?

7 THE DEFENDANT: Yes, I am.

8 THE COURT: And to counsel, have you communicated
9 all formal offers from the prosecution to accept a plea on
10 terms and conditions that may be favorable to the accused?

11 MS. MINER: Yes, Your Honor.

12 THE COURT: And just to -- just to briefly go
13 through the other charges to make sure you understand what
14 those other charges are, Count 2 is conspiracy to commit mail
15 and wire fraud and honest services mail and wire fraud;
16 Count 8, 9, 17 -- sorry -- Count 8 and 9 are wire fraud and
17 honest services wire fraud and aiding and abetting. Count 17
18 is mail fraud, honest services mail fraud, aiding and
19 abetting. Count 19 is money laundering, aiding and abetting.
20 And Counts 20 and 22 are both filing false tax returns.

21 And those are the counts that I understand that you
22 are not pleading guilty to today; is that correct?

23 THE DEFENDANT: Correct, Your Honor.

24 THE COURT: Okay. So let's turn to your plea
25 agreement for a minute. You've entered into a plea agreement

1 with the United States Attorney's Office; is that correct?

2 THE DEFENDANT: Correct, Your Honor.

3 THE COURT: And the document I have here is dated
4 September 10, 2021, and it appears to be signed by you on
5 September 13, 2021, and your attorney on September 14, 2021.
6 Is that the plea agreement to which you have entered?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. Have you had an opportunity to
9 read the agreement and discuss it with your lawyer before you
10 signed it?

11 THE DEFENDANT: I did so, Your Honor.

12 THE COURT: And does the plea agreement contain all
13 of the terms to which you have agreed?

14 THE DEFENDANT: It does, Your Honor.

15 THE COURT: Do you understand the plea agreement?

16 THE DEFENDANT: I do, Your Honor.

17 THE COURT: Do you understand that this agreement
18 is the only agreement you have with the United States
19 Government?

20 THE DEFENDANT: I understand.

21 THE COURT: Has anyone made any promises or
22 assurances to you that are not in the plea agreement?

23 THE DEFENDANT: No, they have not, Your Honor.

24 THE COURT: Has anyone threatened or pressured you
25 in any way to persuade you to accept this agreement?

1 THE DEFENDANT: No, they did not, Your Honor.

2 THE COURT: And do you understand that the terms of
3 the plea agreement as to your sentence are merely
4 recommendations to the Court and that I could reject those
5 recommendations without permitting you to withdraw your
6 guilt -- your plea of guilty, and I could impose a sentence
7 that may be more severe than you anticipate? Do you
8 understand that?

9 THE DEFENDANT: I do, Your Honor.

10 THE COURT: Okay. And do you understand that the
11 offense to which you're pleading guilty is a felony --

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: -- the offenses are felonies?

14 THE DEFENDANT: I do, Your Honor.

15 THE COURT: And do you understand that if I accept
16 your plea, you will be judged guilty of those offenses?

17 THE DEFENDANT: I understand.

18 THE COURT: Do you understand that by being judged
19 guilty, you may lose valuable civil rights, including the
20 right to vote in many states, the right to hold public
21 office, to serve on a jury, and the right to possess a gun or
22 any kind of firearm or ammunition?

23 THE DEFENDANT: I understand, Your Honor.

24 THE COURT: And you're a United States citizen; is
25 that correct?

1 THE DEFENDANT: I am.

2 THE COURT: I want to make sure you understand the
3 maximum and minimum sentences applicable here, and then I
4 will go through and make sure you -- talk about the
5 guidelines. But let's start first with those penalties.

6 And, Ms. Kearney, do you want to go through the
7 counts at issue?

8 MS. KEARNEY: Sure, Your Honor.

9 With respect to Count 4, conspiracy to commit
10 federal programs bribery, in violation of Title 18
11 United States Code Section 371, the maximum penalties are
12 five years' imprisonment; three years of supervised release;
13 a \$250,000 fine or twice the gross gain or loss from the
14 offense, whichever is greater; restitution; forfeiture; and a
15 \$100 special assessment.

16 With respect to Counts 5, 6, and 7, which each
17 charge federal programs bribery, in violation of Title 18
18 United States Code Sections 666(a) (1) (B), the maximum
19 penalties are ten years' imprisonment; three years of
20 supervised release; a fine of \$250,000 or twice the gross
21 gain or loss from the offense, whichever is greater;
22 restitution; forfeiture; and a \$100 special assessment on
23 each count.

24 With respect to Count 21, filing a false tax
25 return, in violation of Title 26 United States Code -- excuse

1 me -- United States Code Section 7206(1), the maximum
2 penalties are three years' imprisonment, one year of
3 supervised release, a fine of \$100,000, restitution, and a
4 \$100 special assessment.

5 THE COURT: And can you please state the
6 disposition that the Government has agreed to recommend under
7 the plea agreement?

8 MS. KEARNEY: Yes, Your Honor. The Government has
9 agreed to recommend a sentence of incarceration for a term of
10 not more than 48 months, 24 months of supervised release, a
11 mandatory special assessment of \$500, and forfeiture as set
12 forth in the plea agreement.

13 The parties have also agreed about a special
14 condition of supervised release involving cooperation with
15 the examination and collection division of the IRS.

16 THE COURT: And what about any fine?

17 MS. KEARNEY: The parties have not -- or excuse
18 me -- the United States has not -- is not recommending a
19 fine.

20 THE COURT: Okay. I want to -- I'm going to come
21 back to that, Mr. Ernst, but I want to make sure you
22 understand how the United States sentencing guidelines fit in
23 here and how they may affect your sentence. Those guidelines
24 have been issued by the United States Sentencing Commission
25 for judges to consider when determining the sentence in a

1 criminal case. They're not mandatory. That means I do not
2 have to follow them. They are important. I do have to
3 consider them in arriving at your sentence.

4 Have you and your attorney talked about the
5 guidelines and how they may apply in this case?

6 THE DEFENDANT: Yes, we have, Your Honor.

7 THE COURT: Do you understand that I will not be
8 able to determine your guideline sentence until after the
9 probation office has prepared a presentence report?

10 THE DEFENDANT: I do understand that.

11 THE COURT: Do you understand the presentence
12 report will contain information about you, any criminal
13 history, the crimes you committed, and other uncharged or
14 dismissed conduct; and I may consider all of this information
15 in applying the sentencing guidelines?

16 THE DEFENDANT: I understand, Your Honor.

17 THE COURT: And do you understand you'll have the
18 chance to challenge any facts reported in the presentence
19 report, but I need only find these facts to a preponderance
20 of the evidence? Do you understand that?

21 THE DEFENDANT: I do.

22 THE COURT: And do you understand that, although
23 I'm not required to follow the guidelines, I am required to
24 consider the applicable guideline sentence before I impose
25 sentence on you? Do you understand that?

1 THE DEFENDANT: I do.

2 THE COURT: And do you understand that, under the
3 guideline system, I have the authority to depart from the
4 guideline sentence and to impose a sentence that is more or
5 less severe than the guidelines call for? Do you understand
6 that?

7 THE DEFENDANT: I understand, Your Honor.

8 THE COURT: And do you understand that you will not
9 be permitted to withdraw your plea of guilty if your sentence
10 is longer or different than you expect?

11 THE DEFENDANT: I understand.

12 THE COURT: So, with that, do you understand that I
13 have the power to give you a term of imprisonment based on
14 the counts that you're pleading guilty hereto of a maximum
15 imprisonment of five years on Count 4, ten years on 5 through
16 7, three years on Count 21; and I have the power to give that
17 sentence, despite the recommendation here, so long as any
18 sentence I impose is reasonable under the circumstances?

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And do you understand that, in addition
22 to a prison term, I'll have the power to give you a term of
23 supervised release of three years on each count, except
24 Count 21, which has a maximum supervised release of one year?

25 Do you understand that?

1 THE DEFENDANT: I understand, Your Honor.

2 THE COURT: And do you understand that if you later
3 violate conditions of supervised release, you can be given
4 additional time in prison?

5 THE DEFENDANT: I do understand that, Your Honor.

6 THE COURT: Do you understand that, notwithstanding
7 the agreement with the Government, I will have the power to
8 fine you up to 250,000 or twice the gross gain or loss,
9 whichever is greater, for Counts 4, 5 and -- 5 through 7, and
10 up to \$100,000 on Count 21, again, so long as the sentence I
11 impose is reasonable under the circumstances?

12 Do you understand that?

13 THE DEFENDANT: I do understand that, Your Honor.

14 THE COURT: And do you understand that, in addition
15 to everything else, you will be required to pay \$100 special
16 assessment for each count, for a total of \$500?

17 THE DEFENDANT: I understand, Your Honor.

18 THE COURT: And do you understand that I also will
19 have not only the power, but the obligation to impose
20 forfeiture? Do you understand that?

21 THE DEFENDANT: I understand that, Your Honor.

22 THE COURT: And forfeiture as -- the plea agreement
23 doesn't specify the forfeiture. It's in the superseding
24 indictment; is that correct?

25 MS. KEARNEY: The plea agreement also details the

1 forfeiture in Section 7, on page 5.

2 THE COURT: Do you understand that, under the plea
3 agreement, that the plea agreement specifies a forfeiture
4 of amounts that have been turned over to the United States
5 Marshals Service already in the amount of \$276,719 and, in
6 addition, an order of forfeiture in the amount of \$3,435,053?

7 Do you understand that?

8 THE DEFENDANT: I understand that, Your Honor.

9 THE COURT: Okay. And do you understand all of
10 these are possible consequences to pleading guilty?

11 THE DEFENDANT: I understand, Your Honor.

12 THE COURT: Okay. So the next thing I need to do
13 is make sure you understand your trial rights that you have
14 and that you'll be giving up by pleading guilty.

15 Do you understand you have the right to plead not
16 guilty to the offense charged against you and to go to trial?

17 THE DEFENDANT: I -- I understand that, Your Honor.

18 THE COURT: And do you -- so I'm going to go
19 through all the rights that you have to make sure you
20 understand what you're going to be giving up here.

21 THE DEFENDANT: Okay.

22 THE COURT: Do you understand you have the right to
23 a trial by jury?

24 THE DEFENDANT: I do.

25 THE COURT: Do you understand a jury is composed of

1 12 jurors who must find beyond a reasonable doubt that you
2 committed the crimes with which you are charged before you
3 may be found guilty?

4 THE DEFENDANT: I do.

5 THE COURT: Do you understand at trial you'd be
6 presumed to be innocent, and the Government would have to
7 prove your guilt beyond a reasonable doubt?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand at trial you would
10 have the right to the assistance of counsel for your defense?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand you'd have the right
13 to see and hear all the witnesses against you and have them
14 cross-examined in your defense?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand you'd have the right,
17 if you chose to exercise it, to testify and to put on
18 evidence in your defense?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand you'd have the right
21 to require witnesses to come to Court to testify in your
22 defense?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand you'd have the right
25 to refuse to testify and refuse to put on evidence unless you

1 voluntarily elected to do so?

2 THE DEFENDANT: Yes.

3 THE COURT: You understand that if you decided not
4 to testify or not to put on any evidence, those facts could
5 not be used against you?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you further understand that by
8 entering a plea of guilty here today, if I accept your plea,
9 there will be no trial, and you will have waived or given up
10 your right to a trial as well as the rights that come with a
11 trial that I have just described?

12 THE DEFENDANT: I understand, Your Honor.

13 THE COURT: Okay. The other thing -- the next
14 thing is that your plea agreement includes a waiver of appeal
15 rights. And I need to make sure you understand that waiver
16 and first make sure you understand what your appeal rights
17 would be without the waiver so you understand what you're
18 giving up here. And we'll come to that other point in a
19 minute.

20 Do you understand that, but for the terms set forth
21 in the plea agreement that waives your right to appeal your
22 conviction, you may have been able to argue in a future
23 proceeding, collateral or otherwise, that your conviction
24 should be set aside or reduced?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that, but for the
2 terms set forth in the plea agreement that waive your right
3 to appeal your sentence or seek a further reduced sentence in
4 circumstances set forth in those paragraphs, any sentence
5 that I impose could have been appealed by you on direct
6 appeal or challenged in a future proceeding, collateral or
7 otherwise?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand the following appeal
10 waiver provisions in your plea agreement: You will not
11 challenge your conviction on direct appeal or in any other
12 proceeding, including a separate civil lawsuit; you will not
13 challenge your sentence, including any court orders related
14 to forfeiture, restitution, fines, or supervised release on
15 direct appeal or in any other proceeding, including a
16 separate civil lawsuit?

17 Do you understand that?

18 THE DEFENDANT: I understand, Your Honor.

19 THE COURT: Okay. And now, for counsel, as you
20 know, the plea agreement that the U.S. Attorney's Office had
21 been using at the time in September has been -- questions
22 have been raised by one of my colleagues. And it is my
23 understanding that the Government is -- agrees that the
24 reservation of rights for any misconduct that might allow for
25 an appeal is not limited to intentional misconduct.

1 I'm not sure I stated all of that the way -- to get
2 the whole point out, but as written, it says that
3 intentional -- there's a waiver for intentional misconduct.
4 And the question has been raised that that should not be
5 limited to intentional misconduct, just misconduct serious
6 enough.

7 Any disagreement, Ms. Kearney, that that should be
8 amended?

9 MS. KEARNEY: No, Your Honor. The Government would
10 propose deleting the word "intentional" from that sentence in
11 the last section -- the last paragraph of Section 5 of the
12 plea agreement.

13 THE COURT: And, Ms. Miner, I assume you're in
14 accord?

15 MS. MINER: I am, Your Honor, and we had discussed
16 this in advance.

17 THE COURT: Okay. So in paragraph 5, it states,
18 "The parties agree" -- and I'm going to now read it as
19 amended here just so that the record is clear:

20 "The parties agree that, despite giving up these
21 rights, Defendant keeps the right to later claim that his
22 lawyer rendered ineffective assistance of counsel or that the
23 prosecutor or a member of law enforcement involved in the
24 case engaged in misconduct serious enough to entitle
25 Defendant to have his conviction or sentence overturned."

1 Counsel, have I read that correctly?

2 MS. KEARNEY: Yes, Your Honor.

3 MS. MINER: Yes, Your Honor.

4 THE COURT: So that's the agreement. Mr. Ernst, do
5 you understand that reservation of rights?

6 THE DEFENDANT: I understand, Your Honor, yeah.

7 THE COURT: Okay. So, with that, let's turn to the
8 offenses at issue here. And I'm going to go through each of
9 the different counts that you're now pleading guilty to and
10 make sure you understand the elements for each of those which
11 the Government would have to prove beyond a -- each of these
12 elements the Government would have to prove beyond a
13 reasonable doubt if the case were to go to trial, and -- make
14 sure you understand those -- and then I'm going to ask the
15 Government about the factual basis for the plea.

16 So for the conspiracy to commit federal programs
17 bribery, the Government would have to prove, if this case
18 were to go to trial, that there was an agreement to commit
19 federal programs bribery; that is, to have an agent of an
20 organization that received federal benefits in excess of
21 \$10,000 in a one-year period accept or agree to accept
22 anything of value from any person; that the agent acted
23 corruptly with the intent to be influenced or rewarded in
24 connection with any business transaction or series of
25 transactions; and that the value of the business transaction

1 or series of transactions was \$5,000 or more. So that's the
2 first element, is there was such an agreement.

3 You were a party to or a member of that agreement;
4 you joined the agreement or conspiracy knowing of its
5 objectives to commit federal programs bribery and intending
6 to join together with at least one other conspirator to
7 achieve that objective.

8 For the counts -- the federal programs bribery
9 counts, the Government would have to show you were an agent
10 of an organization that received federal benefits in excess
11 of \$10,000 in a one-year period; you solicited, demanded,
12 accepted, or agreed to accept anything of value from another
13 person; you did so corruptly with the intent to be influenced
14 or rewarded in connection with some business transaction or
15 series of transactions of the organization -- here,
16 Georgetown -- that this business transaction or series of
17 transactions involved anything of value of \$5,000 or more;
18 and that during each of the one-year periods asserted in the
19 indictment, the organization received federal benefits in
20 excess of \$10,000.

21 And then, finally, on Count 21, the elements, you
22 willfully made or caused to be made and signed an income tax
23 return for the year in question that was false as to a
24 material matter, the return contained a written declaration
25 that it was made under the penalty of perjury, and you did

1 not believe the return to be true and correct as to the
2 material matter in the indictment. So those are the
3 elements.

4 Ms. Kearney, any disagreement with that statement
5 of the elements?

6 MS. KEARNEY: Just one addition, Your Honor. With
7 respect to the elements for conspiracy to commit federal
8 programs bribery, Your Honor mentioned accepting or agreeing
9 to accept a bribe, but I believe it would also include
10 corruptly soliciting or demanding a bribe as well.

11 THE COURT: I think you're correct, and I did not
12 read it the -- I read it in the first part, but not in the
13 second.

14 So do you understand --

15 And any disagreement, Ms. Miner?

16 MS. MINER: No, Your Honor.

17 THE COURT: Mr. Ernst, do you understand that those
18 are the elements the Government would have to prove if
19 this -- if this case went to trial?

20 THE DEFENDANT: I understand, Your Honor.

21 THE COURT: Okay. And so now I'm going to have --
22 Ms. Kearney, if you could please provide the facts that the
23 Government would offer or the evidence the Government would
24 offer if this case were to go to trial.

25 MS. KEARNEY: Yes, Your Honor.

1 If this case were to proceed to trial, the evidence
2 would show through recorded telephone calls, e-mails,
3 financial records, and witness testimony that the defendant,
4 Gordon Ernst, when he was the head men's and women's tennis
5 coach at Georgetown University, agreed to accept and did
6 accept bribe payments from William Rick Singer and his
7 clients to help secure admission to Georgetown for the
8 children of Singer's clients.

9 The evidence would further show that Ernst did not
10 report all of these payments as income on his federal income
11 taxes.

12 The evidence would show that Georgetown University
13 is a highly selective private university located in
14 Washington, DC. In each of the years, 2007 through 2019,
15 Georgetown received more than \$10,000 in federal Pell Grants.
16 Defendant Ernst worked at Georgetown as the men's and women's
17 tennis coach from 2006 through 2018.

18 In that capacity, Mr. Ernst was responsible for,
19 among other things, recruiting legitimate athletes to play on
20 the Georgetown tennis team. Georgetown allotted Mr. Ernst
21 six recruitment spots per year to use to recruit legitimate
22 tennis players. At Georgetown, students recruited for
23 athletic slots have substantially higher admissions prospects
24 than nonrecruited students with similar grades and
25 standardized test scores.

1 During the period 2007 to 2018, Mr. Ernst agreed
2 with Singer and his clients to recruit at least 19 students
3 to the Georgetown tennis team in exchange for bribe payments
4 totalling more than three million. For example, in or about
5 December 2012, Mr. Ernst used one of his six recruitment
6 slots for that year on the daughter of one of Singer's
7 clients, despite that she did not play tennis competitively,
8 thereby facilitating her admission to Georgetown.

9 Singer's client thereafter paid a total of \$275,000
10 to Singer's nonprofit, the Key Worldwide Foundation, or KWF,
11 between April and July 2013. Singer, in turn, caused KWF to
12 make monthly payments to Ernst totalling \$244,000 between
13 September 2012 and September 2013, a portion of which was for
14 the admission of that student.

15 THE COURT: Ms. Kearney, can I just interrupt you
16 there for one minute? The monthly payments to Ernst, those
17 went directly to him in his own name or some other way?

18 MS. KEARNEY: The payments largely went directly to
19 Mr. Ernst.

20 THE COURT: Not to accounts at the university that
21 he had control over?

22 MS. KEARNEY: No.

23 THE COURT: Thank you. Okay.

24 MS. KEARNEY: I think one payment over the course
25 of the scheme went to the university, a small payment for

1 tennis courts, but the rest went directly to Mr. Ernst.

2 THE COURT: And when you say "small," what's the
3 measure of small here?

4 MS. KEARNEY: I --

5 THE COURT: Or the factor of it? I don't need to
6 know the exact dollar, but --

7 MS. KEARNEY: It was not in the hundreds of
8 thousands of dollars. I believe it was only \$5,000.

9 THE COURT: Okay. I'll let you continue.

10 MS. KEARNEY: Thank you.

11 As another example, on or about August 21, 2015,
12 Mr. Ernst e-mailed his contact in the Georgetown admissions
13 office that he was using one of his six recruitment slots for
14 that year on the son of one of Singer's clients, thereby
15 facilitating his admission to Georgetown. Ernst used the
16 recruitment slot on the student, despite that the student did
17 not play tennis competitively.

18 At Singer and his associates' direction, on or
19 about April 28, 2016, after the student had been formally
20 admitted to Georgetown, Singer's client issued a check to KWF
21 in the amount of \$400,000. Between on or about September 11,
22 2015, and November 30, 2016, Singer caused KWF to issue
23 checks to Ernst totalling \$950,000, representing payments for
24 the purported recruitment of the student and the children of
25 Singer's other clients.

1 Additionally, between in or about 2014 and in or
2 about 2016, Mr. Ernst recruited the student identified in
3 Count 5 as "Georgetown Applicant 3" in exchange for a
4 \$200,000 bribe payment from the student's father.

5 Among other things, on or about October 19, 2014,
6 Mr. Ernst e-mailed his contact in the Georgetown admissions
7 office and notified her that he wanted to use one of his
8 recruitment slots on Georgetown Applicant 3 and falsely
9 reported that he had been approached about the student by the
10 student's director of college counseling at her high school.

11 On or about May 8, 2015, the father of Georgetown
12 Applicant 3 withdrew \$200,000 from a bank account in Florida
13 and flew to Massachusetts to meet with a middleman who took
14 the funds to pass on to Ernst. The middleman thereafter met
15 with Mr. Ernst's wife in Falmouth, Massachusetts, where he
16 passed some of the funds to her and kept some for himself.

17 In or about July 2016, Mr. Ernst made plans
18 directly with the father of Georgetown Applicant 3 to meet in
19 Mashpee, Massachusetts, for a further payment.

20 Between in or about 2017 and in or about 2018,
21 Mr. Ernst recruited the student identified in Count 6 as
22 "Georgetown Applicant 4" in exchange for a bribe payment from
23 the student's uncle. Among other things, the same middleman
24 reached out to Mr. Ernst in or about the summer of 2017 and
25 told him that the student's uncle was willing to pay \$100,000

1 if the student was admitted to Georgetown.

2 Mr. Ernst agreed to use one of his recruitment
3 slots to facilitate the student's admission if the student
4 could not get admitted under Georgetown's Early Action
5 program on his own merits. Among other things, on or about
6 November 15, 2017, Mr. Ernst e-mailed his contact in the
7 Georgetown admissions office that the student was a likely
8 but not yet definite tennis recruit.

9 The student was ultimately admitted early action to
10 Georgetown in the fall of 2017. In May 2018, the student's
11 uncle wired 110,000 to the middleman, who in turn wired
12 60,000 to Mr. Ernst from the middleman's account in Milton,
13 Massachusetts.

14 In or about August 2018, the middleman met the
15 student's uncle in Philadelphia, where the uncle gave the
16 middleman an additional \$50,000 in cash. The middleman later
17 met Mr. Ernst off of I-495, approximately halfway between
18 Milton and Falmouth, Massachusetts, and gave him some of the
19 funds in cash.

20 Between in or about 2017 and in or about 2018,
21 Mr. Ernst recruited the student identified in Count 7 as
22 "Georgetown Applicant 5" as a tennis player in exchange for a
23 bribe payment from her father. Among other things, on or
24 about August 31, 2017, the father made a \$25,000 payment to
25 Mr. Ernst. Mr. Ernst thereafter used one of his recruitment

1 slots for the student.

2 The father continued to make payments directly to
3 Mr. Ernst, as well as to Ernst's daughter's private school
4 for her tuition, in exchange for the daughter's recruitment.
5 These payments totaled \$220,000, including a payment on or
6 about June 25, 2018, that the father mailed to Mr. Ernst's
7 home on Cape Cod.

8 On or about March 15, 2018 -- excuse me -- Ernst's
9 tax preparer electronically filed Ernst's Form 1040 -- excuse
10 me.

11 On or about March 15, 2018, Ernst's tax preparer
12 electronically filed Ernst's Form 1040 U.S. Individual Income
13 Tax Return for tax year 2017 from Chelmsford, Massachusetts.
14 The return was received at the IRS's Andover services center.
15 That return omitted the \$110,000 in bribe payments received
16 from Georgetown Applicant 5's father during tax year 2017.

17 Prior to the filing of his Form 1040, Mr. Ernst
18 electronically signed a Form 8879 IRS e-file signature
19 authorization, which authorized his tax preparer to file his
20 Form 1040.

21 The Form 8879 provided, in relevant part, that,
22 quote, "Under penalties of perjury, I declare that I have
23 examined a copy of my electronic individual income tax return
24 and accompanying schedules and statements for the tax year
25 ending December 31, 2017; and to the best of my knowledge and

1 belief, it is true, correct, and accurately lists all amounts
2 and sources of income I received during the tax year."

3 THE COURT: Thank you.

4 I'm just looking at the superseding -- second
5 superseding indictment, the scope of the conspiracy for the
6 federal programs bribery. And I read it that the conspiracy
7 here was limited to the transactions at Georgetown. Is -- am
8 I reading that correctly, as opposed to the broader
9 conspiracy in the -- some of the other counts?

10 MS. KEARNEY: Yes, Your Honor, you're reading that
11 correctly.

12 THE COURT: Okay. Mr. Ernst, did you understand
13 the facts as recited by the assistant U.S. attorney?

14 THE DEFENDANT: I did, Your Honor.

15 THE COURT: And, briefly, what Ms. Kearney
16 recounted was that you had a certain number of spots at
17 Georgetown that, I guess, you could make recommendations for
18 admission and that on the occasions that she described as
19 exemplary, you recommended somebody in return, essentially,
20 for cash that went to you for -- in return for that
21 recommendation that then -- for which the -- following which,
22 the students were then admitted.

23 Any disagreement with the facts as recounted by the
24 assistant U.S. attorney?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: And if you have no dispute with any of
2 those facts, are you in fact guilty of the counts charged?

3 THE DEFENDANT: Yes, I am, Your Honor.

4 THE COURT: Defense counsel, is there any reason
5 the Court should not take the change of plea?

6 MS. MINER: No, Your Honor.

7 THE COURT: Ms. Marchione, if you could please take
8 the change of plea.

9 THE DEPUTY CLERK: Yes, Your Honor.

10 Mr. Ernst, you are charged in a second superseding
11 indictment with Count 4, conspiracy to commit federal
12 programs bribery, all in violation of Title 18 United States
13 Code Section 371; Counts 5 through 7, federal programs
14 bribery, all in violation of Title 18 United States Code
15 Section 666(a) (1) (B); and Count 21, filing a false tax
16 return, all in violation of Title 26 United States Code
17 Section 7206(1).

18 You have previously pleaded not guilty to these
19 charges. Do you now wish to change your plea?

20 THE DEFENDANT: I do.

21 THE DEPUTY CLERK: How do you now plead to
22 Counts 4, 5 through 7, and 21, guilty or not guilty?

23 THE DEFENDANT: Guilty.

24 THE DEPUTY CLERK: Thank you.

25 THE COURT: The Court finds that the defendant is

1 fully competent and capable of entering an informed plea;
2 that he is aware of the nature of the charges and the
3 consequences of the plea; and that the plea of guilty is a
4 knowing and voluntary plea supported by an independent basis
5 in fact containing each of the essential elements of the
6 offenses charged.

7 The plea is, therefore, accepted; and the defendant
8 is now judged guilty of these offenses.

9 Okay. The last thing here is I have -- just want
10 to go over, again, briefly a little more about the
11 presentence report. The presentence report is going to be
12 prepared by the probation office to assist me in determining
13 your sentence. You'll be asked to give information for that
14 report. Your attorney may be present if you wish.

15 It's very important that the report is accurate.
16 It will not only affect what sentence you receive, but also
17 affect what happens to you after you're sentenced. For
18 example, if you're sent to prison, it will affect where
19 you're sent and what happens to you when you get there. Even
20 minor mistakes in the report should be corrected.

21 You'll have a chance to read the report, as will
22 your counsel, and to file objections before the time of
23 sentencing. And both you -- you and your counsel will have
24 the opportunity to speak on your behalf at the time of
25 sentencing. So I refer you to the probation office for the

1 presentence report.

2 Ms. Marchione, do we have a date for sentencing?

3 THE DEPUTY CLERK: Yes, Your Honor. We have
4 March 2, 2022, at 2:30.

5 THE COURT: I'm sorry; March?

6 THE DEPUTY CLERK: 2nd.

7 THE COURT: That seems pretty far out.

8 THE DEPUTY CLERK: And there was a reason,
9 Your Honor. I did confer with Martha Victoria from
10 probation, and she has several PSRs from this case and other
11 cases that are related, and so I went by the other
12 sentencings that she already has lined up.

13 THE COURT: Okay. Any objection from counsel for
14 that date, about that date? It's pretty far out.

15 MS. MINER: That's fine, Your Honor.

16 MS. KEARNEY: No objection, Your Honor.

17 THE COURT: Okay. And then I do have -- oh, just
18 to remind counsel, my scheduling order requires memoranda to
19 be filed -- sentencing memoranda to be filed a week prior to
20 sentencing. If you are unable to do that, you need to notify
21 the Court ahead of time. I will move sentencing rather than
22 be rushed in going through the sentencing material.

23 So I do have a -- I believe I have a report from
24 probation that all of the terms of release have been complied
25 with thus far, and so I am -- unless there's any objection to

1 continuing the same -- continuing release on the same
2 terms -- any objection to that?

3 MS. KEARNEY: No objection.

4 THE COURT: Ms. Miner, any objection?

5 MS. MINER: No objection. I'm sorry. We're
6 perfectly fine.

7 THE COURT: Based on the information provided to me
8 by the probation office, I do find by clear and convincing
9 evidence that Mr. Ernst is not likely to flee or pose a
10 danger to any other person or the community if released
11 pending sentencing; and, therefore, he will be released, or
12 remain released, on the agreed-upon conditions.

13 Mr. Ernst, I do need to let you know that violating
14 any of those conditions of release may result in an immediate
15 issuance of a warrant for your arrest, revocation of release,
16 order of detention, forfeiture of bond, and prosecution for
17 contempt of court and could result in imprisonment, fine, or
18 both.

19 And if while on release you commit a federal
20 felony, the punishment is an additional prison term of not
21 more than ten years; for a federal misdemeanor offense,
22 punishment is an additional prison term of not more than one
23 year; and that any such sentence would be consecutive to any
24 other sentence you receive.

25 And if after release you knowingly fail to appear

1 as the conditions of release require or to surrender to serve
2 a sentence, you may be prosecuted for failure to appear or
3 surrender; and, again, additional punishment may be imposed,
4 and that would be consecutive to any other sentence you
5 receive.

6 So, with that, I will see everyone in May. Thank
7 you very much -- no.

8 THE DEPUTY CLERK: March.

9 THE COURT: Sorry. No wonder I thought it was so
10 bad. That's the reason why I was wondering. March?

11 THE DEPUTY CLERK: March 2nd, Your Honor.

12 THE COURT: I will see everyone in March.

13 THE DEFENDANT: Thank you, Your Honor.

14 MS. KEARNEY: Thank you, Your Honor.

15 MS. MINER: Thank you, Your Honor.

16 THE COURT: Thank you. We are in recess.

17 (Court in recess at 3:57 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Robert W. Paschal, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 9th day of November, 2021.

/s/ Robert W. Paschal

ROBERT W. PASCHAL, RMR, CRR
Official Court Reporter